



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Tek-Wave, Inc.--Request for Reconsideration  
File: B-228453.4  
Date: June 7, 1988

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### DIGEST

Request for reconsideration is denied where protester fails to show any basis that would warrant reversal or modification of our prior decision.

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### DECISION

Tek-Wave, Inc. requests reconsideration of our decision in Tek-Wave, Inc., B-228453.3, Apr. 26, 1988, 88-1 CPD ¶ 402, in which we denied its protest of the U.S. Army Communications-Electronics Command's rejection of its low bid for amplifiers for the Satellite Communications System because of the contracting officer's finding that Tek-Wave was nonresponsible. The contracting officer determined Tek-Wave nonresponsible based upon a preaward survey report citing Tek-Wave's unsatisfactory prior performance record, lack of satisfactory accounting system, questions concerning Tek-Wave's production capability, and its ability to timely meet delivery schedules.

We deny the request for reconsideration.

In its protest, Tek-Wave argued that the contracting officer improperly relied upon the preaward survey and that the contracting officer failed to make an independent determination concerning Tek-Wave's nonresponsibility. Tek-Wave also argued that its delinquency rate had improved, that its facilities and equipment were adequate to timely manufacture the required item, and that its parent company had an adequate cost accounting system.

Our prior decision explained that the contracting agency has broad discretion in making responsibility determinations and that we would not question a nonresponsibility determination

C-2446/136082

unless the protester demonstrates bad faith by the agency or lack of any reasonable basis for the determination. Costec Associates, B-215827, Dec. 5, 1984, 84-2 CPD ¶ 626; System Development Corp., B-212624, Dec. 5, 1983, 83-2 CPD ¶ 644. We specifically held that a contracting officer may rely on a negative preaward survey which indicates that the firm's prior performance was unsatisfactory to support a finding of nonresponsibility. Firm Reis GmbH, B-224544, B-224546, Jan. 20, 1987, 87-1 CPD ¶ 72.

We concluded that the contracting officer's reliance on the delinquency figures in the preaward survey and his genuine concern for timely production under this contract were enough to support the contracting officer's determination of nonresponsibility, even though there was a recent improved delivery record. We also found that Tek-Wave's offer by letter of February 12, 1 month after the solicitation was canceled, to cure its nonresponsibility did not establish that the contracting officer's determination was unreasonable. In this letter, Tek-Wave offered to remedy the admitted primary reason for its delinquent performance by manufacturing components in-house rather than continuing to subcontract for the items from a vendor which was delinquent in its deliveries of components to Tek-Wave. Accordingly, we upheld the agency's determination to reject Tek-Wave's low bid and cancel the solicitation.

In its request for reconsideration, Tek-Wave contends that we failed to properly review the record which allegedly indicates that it offered to make, rather than buy, the components typically delayed due to vendor problems before the solicitation was canceled. Tek-Wave also argues that we failed to address its contention that it does have a cost accounting system.

Tek-Wave's contention that it offered to make certain components before the solicitation was canceled is based upon its response to the preaward survey team that it expected no future vendor delays but would, if necessary, perform the machining operations performed by the vendor. The preaward survey did not, contrary to Tek-Wave's assertion, view Tek-Wave's statement as a firm offer to perform the necessary work in-house, but instead found this response to indicate the offeror's unsure planning and to show a failure to take conclusive action to prevent further delinquencies. The contracting officer reasonably agreed with the preaward survey findings. The undisputed fact remains that the contracting officer had sufficient, reliable information to make a determination of nonresponsibility based on an admitted history of delinquent deliveries under recent prior contracts. We are not persuaded that we erred in our prior decision in concluding that this

determination was reached in good faith and upon a reasonable basis. We did not specifically address the issue of whether Tek-Wave had an adequate cost accounting system because this alone would not be sufficient to overturn the contracting officer's otherwise reasonable determination of nonresponsibility.

The request for reconsideration is denied.

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